IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.511 OF 2005
(FOR LEAVE TO APPEAL)

The State of Maharashtra. ..Applicant.

v/s.

Nilesh Dattatraya Rane .. Respondent.

Smt.V.R.Bhonsale, Additional Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 7th February, 2005

P.C.

The 4th Ad-hoc Assistant Sessions Judge, Kolhapur vide his judgment dated 29.11.2003 acquitted the accused of the offence punishable under section 302 of the IPC giving rise to the present criminal application for leave to appeal.

2. We heard the learned Additional Public Prosecutor, perused the impugned judgment and considered the record and proceedings.

3. There is no direct evidence. The prosecution relied upon the circumstantial evidence against the accused-respondent. The circumstantial evidence relied upon by the prosecution is in the nature of (one) the deceased and the accused were last seen together, and (two) the extra judicial confession said to have been made by the accused to Dilip Shete (PW2).

4. Dr.Avinash Ruikar conducted the autopsy on the dead body of Anil Panduring Kiratsing (deceased) on 25.1.2003. He noticed the following external injuries on the dead body:

"1.	C.L.A. on forehead middle, above root of mose 1.8 cm. x 1.1 cm x scalp deep.
2.	C.L.W. on right temporal region, above pinna. 2.3 x 1.8 cms. x scalp deep.
3.	C.L.W. on right frontal region, 1.2 cm. x 0.8 cm. x scalp deep.
4.	C.L.W. on occipital region. 1.6 cm x 1.2 cm. x scalp deep.
5.	Multiple minor abrassions on right cheek, right deltoid region, below left eye."

The doctor also found the following internal injuries on the dead body:-

"1.	Subaponeurotic bleeding on right frontal and right occipital region.
2.	Crack fracture right frontal, right temporal and right occipital bones.
3.	There was traumatic subdural and subarachnoid bleeding."

5. In the cross-examination, he admitted that if a person forcibly falls into a ditch then the injuries mentioned in column No.17 in the postmortem report are possible.

6. Though the prosecution case was that the injuries sustained by the deceased were due to repeated blows with stone, the doctor did not find

himself in agreement with that view of the prosecution. The fact of the matter is that the deceased was found lying in Nala. The medical evidence, therefore, is not beyond doubt to hold that the death of the deceased was homicidal.

7. As regards the evidence relating to last seen, the learned trial Judge held that that by itself was not sufficient to connect the accused with the crime. We do not find any infirmity in the view of the learned trial Judge in the facts and circumstances of the present case where the prosecution has not been able to establish any motive.

8. The extra judicial confession said to have been made by the accused to PW2 has rightly been discarded by the learned trial Judge. As it is, the extra judicial confession is a very weak piece of evidence. Moreover, in the present case, though PW2 to whom the extra judicial confession is said to have been made by the accused and PW9 (police constable Giri Gosavi) were together, the alleged such judicial confession was at no point of time disclosed by PW2 to PW9.

9. All in all, the consideration of the matter by the trial Judge does not suffer from any infirmity warranting grant of leave by this court.

10. Criminal application for leave to appeal is, accordingly, rejected.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)